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ROSA GONZALEZ, JOSE LOPEZ, and minor J.L.

UNITED STATES DISTRICT COURT

NORTHERN DISTRICT OF CALIFORNIA

ROSA GONZALEZ, JOSE LOPEZ, and J.L., a
minor by and through his guardian ad litem
ROSA GONZALEZ,
Plaintiffs,

v.

ANTIOCH UNIFIED SCHOOL DISTRICT,
DONALD GILL, SHELLEY LEWIS, JANEEN
ZUNIGA, BRIAN WILK, and DOES 1-30,

Defendants.

Case No. 3:15-cv-04820-EDL

**FIRST AMENDED COMPLAINT FOR
DAMAGES**

- (1) Violation of Section 1983**
- (2) Disability Discrimination in
Violation of the ADA**
- (3) Disability Discrimination in
Violation of the Rehabilitation Act**
- (4) Violation of Cal. Civ. Code § 52.1**
- (5) Battery**
- (6) Intentional Infliction of Emotional
Distress**
- (7) Negligence**
- (8) Negligent Supervision**
- (9) Violation of Mandatory Duty**
- (10) Violation of the Unruh Civil
Rights Act**
- (11) Violation of Education Code § 220**

[JURY DEMANDED]

1 Plaintiffs ROSA GONZALEZ, JOSE LOPEZ, and J.L., a minor by and through his
2 guardian ad litem ROSA GONZALEZ (hereinafter “J.L.”), allege as follows:

3 **PARTIES**

4 1. Plaintiff ROSA GONZALEZ (“Gonzalez”) is a resident of Contra Costa County,
5 California. She brings this action on her own behalf and as a guardian ad litem for her son, J.L.

6 2. Plaintiff JOSE LOPEZ (“Lopez”) is a resident of Contra Costa County, California.
7 He brings this action on his own behalf.

8 3. Plaintiff J.L. is a minor and resident of Contra Costa County, California.

9 4. Defendant BRIAN WILK (“Wilk”) is a behavioral therapist employed by Defendant
10 Antioch Unified School District (“AUSD”). All actions alleged herein by Wilk were taken in the
11 course and scope of his employment with AUSD.

12 5. Defendant JANEEN ZUNIGA (“Zuniga”) is the principal of Mno Grant Elementary
13 School (“Mno Grant”) in AUSD, in Antioch, California. All actions alleged herein by Zuniga were
14 taken in the course and scope of her employment.

15 6. Defendant DONALD GILL (“Gill”) is the Superintendent at AUSD. All actions
16 alleged herein by Gill were taken in the course and scope of his employment with AUSD.

17 7. Defendant SHELLEY LEWIS (“Lewis”) is a teacher at Mno Grant in the AUSD, in
18 Antioch, California. All actions alleged herein by Lewis were taken in the course and scope of her
19 employment with AUSD.

20 8. AUSD is a public entity duly incorporated and operating under California law as a
21 school district. AUSD is a public entity subject to Title II of the Americans with Disabilities Act
22 of 1990, the requirements of the Rehabilitation Act of 1973, the requirements of California state
23 law requiring full and equal access to public facilities pursuant to Government Code §§11135 and
24 445, *et seq.*, and to all other legal requirements referred to in this Complaint.

25 9. In enacting Title II of the Americans with Disabilities Act, Congress validly
26 abrogated state sovereign immunity, and thus AUSD may be sued pursuant to Title II. *Hason Med.*
27 *Bd. Of California*, 279 F.3d 1167, 1170 (9th Cir. 2002). By accepting Federal Rehabilitation Act
28 funds, AUSD waived its sovereign immunity under the Eleventh Amendment to claims brought

1 pursuant to Section 504 of the Rehabilitation Act of 1973. *Pugliese v. Dillenberg*, 346 F.3d 937
 2 (9th Cir. 2003). Defendant AUSD has agreed to waive Eleventh Amendment immunity with regard
 3 to Plaintiffs' state law claims.

4 10. Plaintiffs sue defendants Does 1 through 30, inclusive, under fictitious names.
 5 Plaintiffs do not presently know their true names and capacities. When they ascertain their true
 6 names and capacities, Plaintiffs will amend this complaint by inserting their true names and
 7 capacities herein. Plaintiffs are informed and believe, and thereon allege, that each of the
 8 fictitiously-named defendants is responsible in some manner for the occurrences herein alleged,
 9 and that the damages Plaintiffs sustained as herein alleged were proximately caused by such
 10 defendants.

11 11. At all relevant times set forth herein, all Defendants acted in concert and as the
 12 agent of one another.

13 **JURISDICTION, VENUE, AND INTRADISTRICT ASSIGNMENT**

14 12. This court has original jurisdiction over Plaintiffs' claims for relief pursuant to 28
 15 U.S.C. § 1331 and 28 U.S.C. § 1343(a)(3). Because Defendant AUSD has agreed to waive
 16 Eleventh Amendment immunity, the court has supplemental jurisdiction over Plaintiffs' state law
 17 claims pursuant to 28 U.S.C. § 1367(a).

18 13. Venue is proper in this district pursuant to 28 U.S.C. § 1391(b) because a substantial
 19 part of the events or omissions giving rise to Plaintiffs' claims occurred in Contra Costa County.

20 14. This case arose in Contra Costa County, California, and, pursuant to Rule 3-2(c) and
 21 (d) of the Local Rules of the Northern District of California, should be assigned to either the San
 22 Francisco or Oakland Division of the Northern District.

23 **FACTUAL ALLEGATIONS**

24 15. Plaintiff J.L. was born on April 28, 2008 and has been diagnosed with autism.
 25 Plaintiffs Rosa Gonzalez and Jose Lopez are his parents.

26 16. At all times relevant to the Complaint, Defendant Brian Wilk was employed as a
 27 behavioral therapist for AUSD.

28 17. J.L. began attending Mno Grant Elementary School in AUSD in 2013. In the fall of

1 2014, J.L. started first grade with Defendant Lewis as his assigned teacher. As part of J.L.'s special
2 education plan, J.L. was assigned a 1-1 aide to work with him at all times in the classroom.

3 18. On or about September 15, 2014, Defendant Wilk arrived in J.L.'s classroom.
4 When Wilk saw J.L. working next to a particular classmate, he became visibly angry and loudly
5 asked Jorge Coto, J.L.'s 1-1 aide, why J.L. was sitting next to the other student. Coto responded
6 that J.L. was working with the student because Wilk had recommended that he do so in the past.

7 19. Wilk, appearing agitated, grabbed J.L. by the arm and forcibly pulled him away
8 from the other student. When J.L. began to cry, Wilk physically grabbed J.L. and forcibly pulled
9 him out of the classroom. After a few minutes, Wilk brought J.L. back into the classroom.

10 20. After returning to the classroom, J.L. continued to resist the separation from his
11 classmate. Wilk again roughly grabbed J.L., this time with more force, and again took him outside.
12 While Wilk was dragging J.L. out of the classroom, J.L. cried out to Coto for help. Wilk, who
13 appeared visibly angry, turned to Coto and ordered him to move away and to not get involved. J.L.
14 became increasingly upset and began calling out for his mother (who was not present) to help him.
15 Wilk once again took J.L. outside and kept him there for several minutes before bringing him back
16 into the classroom.

17 21. After returning J.L. to the classroom, Wilk forcibly removed him from class for a
18 third time. This time, Wilk and J.L. remained outside the classroom for approximately 20 minutes
19 or more. When they finally returned, J.L. was visibly upset and appeared as though he had been
20 crying. He also had visible bruising and redness over a large area on his arm. After Wilk returned
21 J.L. to the classroom for the last time, Wilk left.

22 22. During the time period when Wilk was engaging in abusive conduct toward J.L. as
23 set forth above, J.L.'s teacher, Defendant Lewis, was present in the classroom. Plaintiffs are
24 informed and believe and on that basis allege that Lewis observed Wilk's abusive actions toward
25 J.L. and did nothing to intervene or stop Wilk from continuing to abuse J.L. Plaintiffs are further
26 informed and believe and on that basis allege that Lewis did not immediately report the incident to
27 Defendant Zuniga, the District, or any other authorities.

28 23. Plaintiffs are informed and believe and on that basis allege that hours after Wilk

1 abused J.L., several school employees observed J.L.'s injuries and questioned Coto and/or
2 Defendant Lewis about them. Plaintiffs are further informed and believe that Defendant Zuniga
3 eventually learned of Wilk's abuse.

4 24. Although Wilk's abuse of J.L. occurred on or about September 15, 2014 at
5 approximately 10:00 a.m., neither Defendant Lewis, Defendant Zuniga, nor any other AUSD
6 employee contacted Gonzalez or Lopez about the abuse or J.L.'s injuries until approximately 3:00
7 p.m. that afternoon. At that time, Zuniga told Gonzalez that a "minor" incident had occurred
8 between J.L. and a behavioral therapist, but that it had been resolved. Zuniga also told Gonzalez
9 that Zuniga had contacted the police regarding the matter. When Gonzalez asked about her son,
10 Zuniga informed Gonzalez that the school had sent J.L. home on the bus.

11 25. When J.L. arrived home, he immediately indicated to Gonzalez that his arm hurt.
12 He also said "he hit me" and demonstrated how someone (who Gonzalez later learned was Wilk)
13 had grabbed and twisted his arm. When Gonzalez examined J.L.'s arm, she noted a large area with
14 bruising and redness that was not there when she sent J.L. to school that day. Later that evening,
15 Gonzalez and Plaintiff Lopez, J.L.'s father, contacted the police and reported the abuse.

16 26. On or about September 24, 2014, Gonzalez and Lopez met with Melanie Jones, an
17 AUSD human resources employee. During this meeting, after repeated questioning by Lopez,
18 Jones finally disclosed Wilk's identity to Gonzalez and Lopez. This was the first time anyone from
19 AUSD provided this information to Gonzalez or Lopez. The district did not provide any further
20 information to Gonzalez or Lopez about the incident or any investigation into the incident.

21 27. The full extent of Wilk's verbal, psychological, and physical abuse of J.L. is
22 currently unknown. As a result of Wilk's abuse, J.L. suffered emotional and physical injuries,
23 missed two months of school, and was ultimately unable to return to Mno Grant Elementary
24 School.

25 28. Plaintiffs are informed and believe and on that basis allege that Defendant Zuniga
26 instructed district employees, including Coto, not to talk to Gonzalez or Lopez and not to provide
27 any information to them regarding Wilk or Wilk's abuse of J.L.

28 29. Prior to the late afternoon of September 15, 2014, Gonzalez and Lopez were

1 unaware that their son was subjected to abuse at school. As a result of the discovery of Wilk's
 2 abuse of their son, AUSD's failure to immediately advise them about the abuse and refusal to
 3 provide information regarding the incident and any subsequent investigation, Gonzalez and Lopez
 4 have suffered and continue to suffer emotional distress and other damages.

5 **FIRST CLAIM FOR RELIEF**
 6 **(Violation of Constitutional Rights, 42 U.S.C. § 1983;**
 7 **Plaintiffs v. Defendants Wilk, Gill, Lewis, and Zuniga)**

8 30. Plaintiffs incorporate herein by reference the allegations in paragraphs 1 through 29
 9 above as though fully set forth herein.

10 31. Wilk acted under color of law and violated minor Plaintiff J.L.'s rights under the
 11 Fourth Amendment to the United States Constitution by his actions, including but not limited to
 12 unjustified and excessive force against Plaintiff J.L.

13 32. Defendants Gill, Lewis, and Zuniga acted under color of law and violated Plaintiff
 14 J.L.'s Fourth Amendment rights by actions, including but not limited to acting with deliberate
 15 indifference to the risk of harm to Plaintiff J.L. from Wilk.

16 33. Plaintiffs are further informed and believe that the training policies of AUSD were
 17 not adequate to train AUSD employees to work with children with special needs (such as students
 18 with autism). Defendant Gill, AUSD's superintendent, was responsible for the development and
 19 implementation of training programs for AUSD and was deliberately indifferent to the obvious
 20 consequences of AUSD's failure to train its personnel adequately, and the failure to provide
 21 adequate training caused the deprivation of Plaintiff J.L.'s rights by Wilk. A moving force behind
 22 Plaintiff J.L.'s ultimate injury was Defendant Gill's failure to ensure that AUSD adequately trained
 23 its employees.

24 34. Defendants Gill and Zuniga had final policymaking authority from AUSD
 25 concerning the acts of Wilk, and Defendants Gill and Zuniga ratified Wilk's conduct by failing to
 26 properly respond to Wilk's abuse of J.L. and failing to discipline Wilk.

27 35. Defendants Wilk, Zuniga, Gill, and Lewis violated Gonzalez and Lopez's rights
 28 under the Due Process Clause to the Fourteenth Amendment to the United States Constitution by
 their actions, including but not limited to:

- a. Using or permitting the use of excessive force against J.L.;
- b. Intentionally interfering with the parent-child relationship by concealing information regarding the physical and emotional trauma inflicted on J.L. by Wilk; and
- c. Intentionally interfering with Gonzalez and Lopez's right to provide and receive nurture, support, and comfort regarding highly traumatic events.

36. As a proximate result of Defendants' actions, Plaintiffs have suffered damages, including mental anguish and emotional and physical distress in an amount to be proven at trial.

37. Plaintiffs seek relief as set forth below in their prayer for relief.

SECOND CLAIM FOR RELIEF
(Discrimination in Violation of the Americans with Disabilities Act;
Plaintiff J.L. v. AUSD)

38. Plaintiffs incorporate herein by reference the allegations in paragraphs 1 through 37 above as though fully set forth herein.

39. Effective January 26, 1992, Title II of the Americans with Disabilities Act of 1990 entitled Plaintiff J.L. to the protections of the "Public Services" provisions. Title II prohibits discrimination by any "public entity," including any state or local government, as defined by 42 U.S.C.A. § 12131, Section 201 of the ADA.

40. Pursuant to Section 202 of Title II, "no qualified individual with a disability shall, by reason of disability, be excluded from participation in or be denied the benefits of the services, programs, or activities of a public entity, or be subjected to discrimination by any such entity." 42 U.S.C.A. § 12132.

41. Plaintiff J.L. was at all times relevant herein a qualified individual with a disability as therein defined.

42. AUSD failed in its responsibilities under Title II to provide its services, programs, and activities in a full and equal manner to disabled persons as described hereinabove, including failing to ensure that educational services are provided on an equal basis to children with disabilities and free of hostility toward their disability.

43. Defendant Wilk subjected Plaintiff J.L. to physical, verbal, and psychological abuse

1 because of J.L.'s disability. Wilk's physical, verbal, and psychological abuse of J.L. created a
2 hostile educational environment based on J.L.'s disability.

3 44. AUSD further failed in its responsibilities under Title II to provide its services,
4 programs, and activities in a full and equal manner to disabled persons as described herein by
5 subjecting Plaintiff J.L. to a hostile educational environment.

6 45. As a result of AUSD's failure to comply with its duty under Title II, Plaintiff J.L.
7 has suffered damages including general and special damages according to proof.

8 46. Plaintiffs seek relief as set forth below in their prayer for relief.

9 **THIRD CLAIM FOR RELIEF**
10 **(Violation of § 504 of the Rehabilitation Act of 1973; Plaintiff J.L. v. AUSD)**

11 47. Plaintiffs incorporate herein by reference the allegations in paragraphs 1 through 46
12 above as though fully set forth herein.

13 48. On information and belief, Plaintiff J.L. alleges that AUSD is and has been at all
14 relevant times the recipient of federal financial assistance, and that part of that financial assistance
15 has been used to fund the operations, construction, and/or maintenance of the specific public
16 facilities described herein and the activities that take place therein.

17 49. By their actions or inaction in denying equal access to educational services and by
18 subjecting Plaintiff J.L. to a hostile educational environment, AUSD violated Plaintiff J.L.'s rights
19 under Section 504 of the Rehabilitation Act of 1973, 29 U.S.C. § 794, and the regulations
20 promulgated thereunder.

21 50. As a result of AUSD's failure to comply with its duty under Section 504 of the
22 Rehabilitation Act of 1973, 29 U.S.C. § 794, and the regulations promulgated thereunder, Plaintiff
23 J.L. suffered damages including general and special damages according to proof.

24 51. Plaintiffs seek relief as set forth below in their prayer for relief.

FOURTH CLAIM FOR RELIEF

(Violation of California Civil Code § 52.1; All Plaintiffs v. All Defendants)

52. Plaintiffs incorporate the allegations in paragraphs 1 through 51 above as though fully set forth herein.

53. The actions of Defendants, as alleged herein, including Wilk's violent acts toward Plaintiff J.L., intentionally interfered with Plaintiffs' civil rights under the Constitution and laws of the state of California by threats, intimidation, and/or coercion in violation of Cal. Civ. Code § 52.1.

54. As a proximate result of Defendants' violation of Section 52.1, Plaintiffs were harmed. Defendants' conduct was a substantial factor in causing Plaintiffs' harm. Plaintiffs suffered damages as alleged herein.

55. Plaintiffs seek relief as set forth below in their prayer for relief.

FIFTH CLAIM FOR RELIEF

(Battery; Plaintiff J.L. v. Wilk)

56. Plaintiffs incorporate herein by reference the allegations in paragraphs 1 through 55 above as though fully set forth herein.

57. As alleged herein, Wilk intentionally made physical contact with Plaintiff J.L. in a harmful and offensive manner on at least three occasions while J.L. was a student in the classroom where Wilk was working as a behavioral therapist. This physical contact included but was not limited to instances where Wilk forcibly grabbed Plaintiff J.L.'s arm and pulled him away from his seat, instances where Wilk forcibly grabbed J.L. and dragged him out of the classroom, and inflicting visible injuries on J.L. This use of force against Plaintiff J.L. constituted an unlawful battery.

58. As a proximate result of Wilk's unlawful battery of J.L., Plaintiff J.L. has suffered and will continue to suffer damages in an amount to be proven at trial.

59. Plaintiff seeks relief as set forth below in his prayer for relief.

SIXTH CLAIM FOR RELIEF

(Intentional Infliction of Emotional Distress; All Plaintiffs v. All Defendants)

60. Plaintiffs incorporate herein by reference the allegations in paragraphs 1 through 59 above as though fully set forth herein.

61. In subjecting J.L. to abuse as alleged herein, Defendants engaged in extreme and outrageous conduct beyond the bounds tolerated in a decent society.

62. Defendants acted with the intent to cause Plaintiffs extreme emotional distress, or at a minimum, acted with a reckless disregard as to whether such actions would cause such extreme emotional distress.

63. As a proximate result of Defendants' conduct, Plaintiffs have suffered severe and extreme emotional distress and damages as alleged herein.

64. Plaintiffs seek relief as set forth below in their prayer for relief.

SEVENTH CLAIM FOR RELIEF

(Negligence; All Plaintiffs v. All Defendants)

65. Plaintiffs incorporate herein by reference the allegations in paragraphs 1 through 64 above as though fully set forth herein.

66. Defendants had a duty to exercise reasonable care to prevent harm in their interactions with Plaintiffs. Additionally, Defendants owed a greater degree of care to children than to adults. Defendants failed to exercise reasonable care in their interactions with all Plaintiffs, including minor Plaintiff J.L., as alleged herein.

67. As a proximate cause of Defendants' negligent acts, Plaintiffs have incurred damages as alleged herein.

68. Plaintiffs seek relief as set forth below in their prayer for relief.

EIGHTH CLAIM FOR RELIEF

(Negligent Supervision; All Plaintiffs v. All Defendants)

69. Plaintiffs incorporate herein by reference the allegations in paragraphs 1 through 68 above as though fully set forth herein.

70. School personnel owe students under their supervision a protective duty of ordinary

1 care, for breach of which AUSD is vicariously liable.

2 71. School principals and other supervisory employees, to the extent their duties include
3 overseeing the educational environment and the performance of teachers, counselors, and other
4 district employees working with students, owe a duty of care to take reasonable measures to guard
5 students against harassment and abuse from foreseeable sources, including any employees they
6 know or have reason to know are prone to such abuse.

7 72. As alleged herein, Wilk was unfit to perform the work for which he was hired.
8 Specifically, Wilk lacked appropriate training for how to deal with students on the autism spectrum
9 or how to manage students with behavioral challenges. The District also failed to properly ensure
10 that Wilk and other staff properly implemented J.L.'s educational and behavioral support plan.

11 73. AUSD knew or should have known that Wilk was unfit and that his unfitness
12 created a risk to students.

13 74. Wilk's unfitness harmed Plaintiffs. AUSD's negligence in hiring, supervising, and
14 retaining Wilk was a substantial factor in causing Plaintiffs' harm.

15 75. As a proximate result of Defendants' negligent supervision and retention of Wilk,
16 Plaintiffs have incurred damages as alleged herein.

17 76. Plaintiffs seek relief as set forth below in their prayer for relief.

18 **NINTH CLAIM FOR RELIEF**
19 **(Violation of Mandatory Duty; All Plaintiffs v. All Defendants)**

20 77. Plaintiffs incorporate herein by reference the allegations in paragraphs 1 through 76
21 above as though fully set forth herein.

22 78. Teachers, instructional aides, classified personnel, and administrative officers of the
23 AUSD are mandatory reporters as defined by California Penal Code section 11165.7. As such, they
24 are under a mandatory duty to report to an agency specified in Section 11165.9 whenever, in their
25 professional capacity or within the scope of their employment, they have knowledge of or observe
26 a child whom the mandated reporter knows or reasonably suspects has been the victim of child
27 abuse or neglect. Cal. Penal Code. § 11166.

28 79. A mandatory reporter is required to report suspected child abuse immediately or as

1 soon as practicably possible by telephone and the mandated reporter shall prepare and send, fax, or
 2 electronically transmit a written follow-up report thereof within 36 hours. Cal. Penal Code §
 3 11166.

4 80. Plaintiffs are informed and believe and on that basis allege that teachers,
 5 instructional aides, classified personnel and/or administrative officers of AUSD were aware that
 6 J.L. was a victim of abuse as defined by California Penal Code sections 11165.3 and 11165.4.
 7 However, none of these mandatory reporters employed by the District complied with their duty to
 8 report instances of abuse by Wilk to an agency specified in Penal Code § 11165.9.

9 81. Plaintiffs were harmed by the failure to report the abuse in that Plaintiff J.L. was
 10 subjected to abuse by Wilk and was not able to receive and his parents were not able to provide
 11 appropriate and timely comfort, counseling, and treatment.

12 82. As a proximate result of Defendants' actions, Plaintiffs have incurred damages as
 13 alleged herein.

14 83. Plaintiffs seek relief as set forth below in their prayer for relief.

15 **TENTH CLAIM FOR RELIEF**
 16 **(Violation of the Unruh Civil Rights Act, Civil Code Section 51, et seq.**
 17 **All Plaintiffs v. All Defendants)**

18 84. Plaintiffs incorporate herein by reference the allegations in paragraphs 1 through 83
 19 above as though fully set forth herein.

20 85. The Unruh Civil Rights Act provides that "All persons within the jurisdiction of this
 21 state are free and equal, and no matter what their ... disability ... are entitled to the full and equal
 22 accommodations, advantages, facilities, privileges, or services in all business establishments of
 23 every kind whatsoever." Cal. Civ. Code § 51.

24 86. The Unruh Civil Rights Act further provides that, "Whoever denies, aids or incites a
 25 denial, or makes any discrimination or distinction contrary to Section 51, 51.5, or 51.6, is liable for
 26 each and every offense." Cal. Civ. Code § 52.

27 87. Defendants denied Plaintiff J.L. full and equal advantages, privileges, and services
 28 because of his disability. AUSD and the individual defendants were aware of this discrimination,
 which was intentional.

1 88. Wilk's abuse caused Plaintiff J.L. severe psychological and physical trauma.
 2 Plaintiffs Gonzalez and Lopez have also suffered severe psychological distress because they could
 3 not protect their child from the abuse, or provide support, treatment and counseling to Plaintiff J.L.

4 89. Plaintiffs are informed and believe and on that basis allege that AUSD and its
 5 officials, as well as school personnel, were aware of the abuse perpetrated by Wilk and did nothing
 6 to prevent it, which constitutes willful and affirmative misconduct.

7 90. As a proximate result of Defendants' actions, Plaintiffs have incurred damages as
 8 alleged herein.

9 91. Plaintiffs seek relief as set forth below in their prayer for relief.

10 **ELEVENTH CAUSE OF ACTION**
 11 **(Violation of Education Code Section 220; Plaintiff J.L. v. AUSD)**

12 92. Plaintiffs incorporate herein by reference the allegations in paragraphs 1 through 91
 13 above as though fully set forth herein.

14 93. Section 220 of the Education Code provides: "[n]o person shall be subjected to
 15 discrimination on the basis of disability. . . in any program or activity conducted by an educational
 16 institution that receives, or benefits from, state financial assistance or enrolls pupils who receive
 17 state student financial aid."

18 94. A plaintiff may maintain an action for monetary damages against a school district
 19 when the plaintiff alleges that he suffered severe, pervasive conduct that effectively deprived the
 20 plaintiff of the right of equal access to educational benefits and opportunities; the school had actual
 21 knowledge of the conduct; and the school responded with deliberate indifference. *See, e.g.*
 22 *Donovan v. Poway Unified School Dist.*, 167 Cal.App.4th 567, 603-09 (2008).

23 95. Wilk subjected Plaintiff J.L. to abuse that effectively deprived Plaintiff of the right
 24 of equal access to educational benefits and opportunities, e.g., Plaintiff J.L. regressed
 25 developmentally, missed a significant amount of school, and was unable to return to Mno Grant
 26 after Wilk's abuse.

27 96. Plaintiffs are informed and believe and on that basis allege that AUSD had
 28 knowledge of Wilk's abuse, but was deliberately indifferent by failing to discipline him.

97. Plaintiffs seek relief as set forth below in their prayer for relief.

PRAAYER FOR RELIEF

WHEREFORE, Plaintiffs pray for judgment against Defendants, and each of them, as follows:

1. Compensatory damages to Plaintiffs for pain, suffering, injury, emotional distress, and medical expenses;
2. Punitive damages against Defendants Wilk, Gill, Lewis, and Zuniga;
3. Attorneys' fees and costs;
4. Prejudgment interest and post judgment interest as allowed by law; and
5. For such other and further relief, in law or equity, as the Court may deem appropriate and just.

DATED: January 4, 2016

RUKIN HYLAND DORIA & TINDALL LLP

By: /s/ Peter Rukin

PETER RUKIN

Attorneys for Plaintiffs

ROSA GONZALEZ, JOSE LOPEZ, and
minor J.L

DEMAND FOR JURY TRIAL

Plaintiffs demand a trial by jury.

DATED: January 4, 2016

RUKIN HYLAND DORIA & TINDALL LLP

By: /s/ Peter Rukin

PETER RUKIN

Attorney for Plaintiffs

ROSA GONZALEZ, JOSE LOPEZ, and
minor J.L